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HEARINGS

Before The

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

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MARK-UP OF S. 252 AND S. 253

CLEAN AIR ACT AMENDMENTS

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WEDNESDAY, FEBRUARY 23, 1977

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United States Senate,
Committee on Environment and
Public Works,
Washington, D. C.

The committee reconvened at 9:15 a.m., pursuant to recess, in Room 4200, Dirksen Senate Office Building, Hon. Jennings Randolph (chairman of the committee) presiding.

Present: Senators Randolph (chairman of the full committee), Muskie, Gravel, Bentsen, Burdick, Hart, Anderson, Moynihan, Stafford, Domenici, Chafee and Wallop.

Senator Randolph. A pleasant morning to our guests. We regret again we do not have the accommodations for you to be comfortable, all of you, in sitting. The chair appreciates the commitment of members who are able to be present and hopefully, additional numbers may bring us to that position where we can finalize through vote, certain proposals pending.

Before Senator Muskie, the chairman of our subcommittee, handles the procedure on the amendments to the Clean Air Act, I would like to counsel with the members about a possibility which I hope we can make an actuality. The decision of the

1 Senate today is null and void. I wonder if we can't this
2 afternoon, revise our schedules, even if they are already
3 made. Sometime when the Senate is in session, perhaps with
4 certain appointments we can shift or modify.

5 The chair only suggests it. I would like for us to
6 meet this afternoon following the hour of 11 when we go to
7 the Employment Act, on the subject of public works jobs
8 for general areas. I said yesterday and I repeat that the
9 subject matter before the committee, I deem it always
10 important. But I believe this is a priority in bringing to
11 the Senate itself from this committee the Jobs Bill.

12 I think that is the commitment we have not only to the
13 Senate but to the Administration, I think to the American
14 people. So, with an afternoon which is free of Senate session,
15 I wonder if this morning you might, with your staff, see if
16 there is a possibility of rechecking your schedules so that
17 we could finalize the vote; if not, this morning from 11 to
18 whatever the hour we would be meeting, we can come back in
19 the afternoon.

20 Who knows, we might even be able to report a bill. If
21 that is a faraway dream that can't come true, I will understand.
22 But I think it is possible. What is the situation in the
23 House, John?

24 Mr. Yago. The House on this bill?

25 Senator Randolph. No, sir, the Public Works Job Bill.

1 Mr. Yago. Yes, sir, they have not reported the bill yet.
2 Senator Randolph. Would you gentlemen like to be ahead
3 of the House once? Twice?

4 Senator Gravel. That is a good idea, Mr. Chairman.

5 Senator Randolph. Would you go ahead into discussion.
6 If you check your calendars and we will see a little later
7 this morning.

8 Senator Muskie. Mr. Chairman, I do have to leave some-
9 time this afternoon. What time frame do you have in mind?

10 Senator Randolph. Any time frame I am going to adjust
11 to this afternoon, personally. I have asked my office to
12 do that, whether it be 1 to 2, 1:30 to 2:30 or 3, whatever.
13 The chair is subject to your thinking.

14 Senator Muskie. Would it be possible to work through
15 to 1 and then break and come back later? That would give us
16 a good two hours on the Public Works.

17 Senator Randolph. Yes. That is agreeable with me, sir.

18 Senator Muskie. We might pick up some momentum in that
19 fashion.

20 Senator Randolph. I have a luncheon engagement today. I
21 will change it. It is no problem for me.

22 Senator Gravel. What is this?

23 Senator Muskie. If this isn't conflicting with anybody
24 else's schedule, but with me since I have to leave in the
25 afternoon, if we could work from 11 to 1 with Public Works and

1 then break, we might pick up enough momentum in that two
2 hours to really get a lot done.

3 Senator Randolph. Thank you, Ed. Let us think in terms
4 of doing as much as we can.

5 Senator Hart. If we came back in the p.m., would it be
6 on Public Works or this?

7 Senator Randolph. It would be on Public Works. Quentin,
8 I hope with your leadership we can do that.

9 Senator Muskie. Mr. Chairman, on Clean Air, Senator
10 Hart has been conducting the hearings and also presiding
11 over some of the mark-ups. I would like him to continue.
12 After 13 years I think it is time to pass new leadership
13 on this issue.

14 So, I would like him to pick up this mark-up and take
15 it over. I will try to be as discreet as possible in my
16 involvement, in my usual way.

17 Senator Hart. Underscoring the word best and hoping
18 that you don't be discreet, I will do the best I can.

19 Senator Randolph. Senator Hart?

20 Senator Hart. We, in our previous session on Monday
21 eliminated or, that is to say, agreed to a good portion of
22 the bill, I think almost half of it in terms of quantity.
23 Unless members of the committee have items that they do not
24 see on our agenda today, I think we should assume that all
25 of the remainder of the bill that does not appear on this

1 agenda has been agreed to.

2 I assume under the rules that the committee has always
3 pursued, that if a matter comes up at some further time that
4 is not on the agenda we would be more than happy to add it.
5 But for the purposes of this mark-up, I think we should
6 start with the agenda that we have.

7 Starting with item No. 1 having to do with smelters and
8 I think Senator Domenici indicated on Monday a concern about
9 this area.

10 Senator Domenici. Mr. Chairman, I said previously
11 that perhaps I could come-up with something more practical
12 than that which we had in our bill last year. I have not
13 done that. So, I would not want to waste the committee's
14 time.

15 I would settle for what is in the bill. If we finish
16 today, that will be fine with me. If we go into tomorrow,
17 I may have some small modification. I don't need the
18 committee's time. I just move that we keep the nonferrous
19 smelter provision as it was in the Senate bill last year.

20 Senator Muskie. Mr. Chairman, I would second that
21 motion. I appreciate the Senator's cooperation in moving
22 the thing along. It is always open, of course. I would
23 second that motion.

24 Senator Hart. Do the new members of the committee have
25 any questions about what this is that Senator Domenici could

1 answer? I think we can just put it to a vote then, a voice
2 vote, unless, Pete, you wanted a roll call.

3 Senator Domenici. I don't want a roll call.

4 Senator Hart. All in favor say aye; all opposed? The
5 smelter proposal is agreed to.

6 The second item on the agenda has to do with loss of pay
7 which is a problem that we addressed last time, and
8 specifically affects, I think, the steel industry.

9 This was a provision which I am proposing contained in
10 the conference report last year, which says that plants
11 adopting an intermittent control strategy, that is to say,
12 shutting down for certain days of the year to comply with
13 the overall standards, cannot use that shutdown as a reason
14 to lay-off their employees, that employees are to remain on
15 the payrolls during the period that intermittent control
16 strategy is in effect.

17 The obvious problem here is if a company does decide to
18 close down for a day, a month or whatever and meet the
19 standards that the workers in that plant should not suffer
20 as a result of this. As I said before, this is a provision
21 that was contained in the conference report last year.

22 It is in the bill. It is in S. 253, Section 10(7).

23 Senator Domenici. What page is that found on?

24 Senator Hart. That is on page 16 of S. 253.

25 Senator Muskie. So you are using S. 252 as a base?

1 Senator Hart. Yes, we are. But I don't think this
2 language was in there. We would have to move to add 252,
3 this section found on the top of page 16 of S. 253.

4 Senator Randolph. I would like to ask this question to
5 refresh my own memory, we did not have this in the Senate
6 bill?

7 Senator Hart. That is correct.

8 Senator Randolph. It was in the House measure and the
9 Senate accepted the provision in conference. I am trying
10 to recall, what was the situation? Ed, perhaps you and
11 Gary could handle this better than my memory. What was the
12 discussion within our committee? Was it raised?

13 Senator Domenici. It was not.

14 Senator Randolph. Would it not be a matter of concern
15 to us because it wasn't raised?

16 Senator Hart. It was not raised and it was added in the
17 conference. I believe it was in the House bill.

18 Senator Randolph. There was no discussion of this?

19 Senator Hart. Not to my knowledge. I think it was
20 probably addressed in the House. For some reason it didn't
21 surface and it came up in the conference.

22 Senator Domenici. I want to raise some questions about
23 this. We knew nothing about it. In the hearings as I
24 recall, we asked a couple of the management people to give
25 us their views on this. Did they submit them? I asked

1 Kennicott Copper to submit in writing their views on how
2 they were handling intermittent control outbacks in hours.
3 I didn't see a response.

4 Senator Hart. The staff is checking.

5 Senator Randolph. Did you request that?

6 Senator Domenici. Yes, I did in the hearings, because
7 we knew nothing about it in the committee. The House may
8 have taken testimony, I don't know.

9 I would just like to raise this issue while we are
10 talking. I would hope that in those smelter situations
11 where there is a labor management contract in existence, that
12 we would not be superimposing upon that negotiation something
13 that has already been bargained because there is more than
14 one way to solve the issue of cut-down time.

15 I would assume we would not be dictating to the labor
16 negotiators that there is only one way.

17 Senator Hart. I think it is more a prohibition in terms
18 of the language that is used here. The specific language is,
19 "The owner-operator of such source may not temporarily reduce
20 the pay of any employee but the use of such supplemental
21 or inadvertent..."

22 I think the negotiations between labor and management
23 could take place within that prohibition.

24 Senator Muskie. Would the report language indicate that?

25 Senator Hart. I think it wouldn't hurt. I think the

1 language of our report could specifically state that
2 employees and their employers can negotiate anything they
3 wish within the broad guideline of that prohibition so that
4 it is clear we are not trying to dictate management or
5 labor policy.

6 Senator Domenici. Mr. Chairman, I have no desire nor
7 intention to delay this mark-up. But I feel some sense of
8 responsibility for not having gotten the views of both labor
9 and management even in our very short hearings.

10 Senator Muskie. Pete, could I suggest that maybe staff
11 could work on language that would make it clear that the
12 employer cannot unilaterally, by way of pay reductions or
13 otherwise, impose penalties on employees but that the precise
14 handling of the problem could be negotiated.

15 Senator Hart. That is the thrust of the language. It
16 is not to interfere in the bargaining process nor to dictate
17 the terms of negotiated settlement, but merely to protect the
18 rights of the employee so they do not become the pawns.

19 Senator Domenici. I am wondering by way of just discussing
20 that issue further, I think that would be an excellent
21 mechanism if they are beginning to negotiate. But I wonder
22 what happens if they have a three-year contract and they
23 are a year-and-a half into it. Are we still suggesting that
24 they may mutually agree to an amendment or alteration but
25 it can't be done unilaterally?

1 Senator Hart. I think that is true. The staff may know
2 whether there are any existing contracts where the employees
3 in fact bargain away their rights under this kind of language.

4 Mr. Billings. I know of none. We did receive testimony
5 on this, Senator Domenici, from the steel unions who, as you
6 know, also represent the nonferrous smelter workers. We
7 have not been able to find -- but in the confusion of the
8 past couple weeks that doesn't mean it doesn't exist -- a
9 response to your question of the Kennicott witness.

10 We have no evidence that it has arrived, but we will
11 check again after the mark-up this morning.

12 Senator Hart. We could delay the vote.

13 Senator Muskie. I move that the staff be elected to
14 frame language to incorporate what we have agreed to in
15 this colloquy. By the time we get to the end of the mark-up,
16 I am sure that language can be available and disposed of.

17 Senator Randolph. Are you saying that we pass it over
18 for the moment?

19 Senator Muskie. With that direction of the staff.

20 Senator Hart. I think that is agreeable.

21 Senator Domenici. Would the staff try to find out whether
22 there is a response. If not, perhaps we can get ahold of
23 them and ask them their views and be able to tell the committee
24 sometime later. I thank the chair.

25 Senator Hart. We will return to that provision at a time

1 appropriate. The third item of the agenda has to do with
2 the prevention of significant deterioration. We have
3 received a large amount of testimony on that. Several
4 members indicated an interest in this with possible amend-
5 ments or provisions to be suggested to the full committee.
6 I think Senator Gravel was the first to indicate he had some
7 proposals.

8 Senator Gravel. Mr. Chairman, I have a particularly
9 encompassing amendment. I have a briefing paper on it and
10 then I have a spread sheet for comparison. Let me note
11 this report that we have. I have telegrams from Governor
12 Carey of New York, Governor Rockefeller of West Virginia
13 and Governor Ray of Iowa. Those are the governors we have
14 been able to contact.

15 Senator Randolph. Governor Rockefeller?

16 Senator Gravel. Of West Virginia. Then I have a letter
17 from STAPA which is the State and Territorial Air Pollution
18 Administrators who endorsed the amendment. If you have the
19 spread sheet with you, I will take the time to go through
20 the briefing paper. That might bring everybody up to speed
21 on it. Would that be a good suggestion?

22 Senator Kart. I think that would be a good suggestion.

23 Senator Gravel. If you follow both on the spread sheet
24 briefing paper, the first item and I deal with
25 both the Senate bill, the Conference bill and my proposed

1 amendment. With respect to Class I designations, this is
2 the same as the Senate bill and the Conference bill and
3 my amendment. With respect to Class I designation, the
4 Senate Conference bills do not contain any discretionary
5 Class I areas.

6 My amendment initially designates existing national
7 recreational areas, wild and scenic rivers, lakeshores,
8 seashores and monuments -- which have 25,000 acres or
9 larger -- as Class I.

10 These areas may be redesignated as Class II by the
11 governor after a supporting analysis has been prepared and
12 public hearings have been held. For a Class I we have a
13 review of Federal lands. The Senate bill did not mandate
14 a review of Federal lands to determine if there were any
15 other lands which should be considered for Class I designation.

16 The Senate bill, however, did allow States to recommend
17 Class I designations on Federal lands but it required concur-
18 rence of the Federal land manager which I believe was an
19 erosion of the powers given to the State in Section 116.

20 The Conference bill mandated a 12-month review of certain
21 Federal lands, national monuments, primitive areas, preserves,
22 to determine whether some of them should be designated as
23 Class I by the governor.

24 The Federal land manager's recommendation were to be
25 accompanied by a supporting analysis. My amendment mandates

1 amendment says Federal land managers shall review all lands
2 under his jurisdiction and recommend to the governor. That
3 is all inclusive of all Federal holdings.

4 Senator Muskie. We want to know what that includes.
5 This spread sheet says existing in the recreation areas,
6 wild and scenic rivers, lakeshores, seashores, monuments
7 which are 25,000 acres or larger. Is the 25,000 acres a
8 limitation? It is not according to the language you have.

9 Mr. Cummings. Not with respect to that provision.

10 Senator Muskie. We are talking about discretionary
11 Class I designations.

12 Mr. Cummings. There is language that requires a minimum
13 size of 5,000 acres.

14 Senator Muskie. You are going to review lands on less
15 than 25,000 but only designate lands of 25,000 or more.

16 Mr. Cummings. No, 5,000. There are three different
17 classes, there are those lands which are automatically
18 Class I.

19 Senator Muskie. I understand. That is clear.

20 Mr. Cummings. There are a class of lands which start out
21 as Class I. Those are the ones, special national interest
22 areas like recreation areas, scenic rivers, lakeshores,
23 national monuments, they start out as Class I but may be
24 redesignated as Class II.

25 In addition, the Federal land manager has to review all

1 other Federal lands and recommend --

2 Senator Muskie. There should be a more specific way to
3 refer to land categories than all other Federal lands.

4 Mr. Cummings. I think it is to make a determination about
5 all lands which the Congress might not have addressed which
6 includes forests, military reservations in some cases, refuges.

7 Senator Muskie. Shouldn't we have somebody list those?

8 Senator Gravel. There are basically four.

9 Senator Muskie. Are we interested in military reservations?

10 Senator Gravel. We should be.

11 Mr. Cummings. The qualifying language in Senator Gravel's
12 amendment is the phrase where air quality related values are
13 important attributes of the area.

14 Senator Muskie. That is a subjective judgment?

15 Mr. Cummings. Yes, sir. That is the same kind of judgment
16 that is implicit in the Class I concept.

17 Senator Gravel. But under certain criteria while it is
18 the rivers.

19 Senator Muskie. I assume you have this broad language, you
20 could require somebody to go over to the Pentagon, but that is
21 in an air quality region. You would have to go through the paper
22 work of reviewing the Pentagon and determine whether it needs
23 to be designated a Class I area. It seems to me there are some
24 Federal properties that you could exclude in order to reduce the
25 bureaucratic burden.

1 Mr. Cummings. That is a distinction from the Senate bill.
2 The Senate bill was based on classification of lands which were
3 cleaner than the secondary standards. I don't think that dis-
4 tinction is in Senator Gravel's amendment, but I am not sure.

5 Senator Muskie. But there is no other more specific way
6 to refer what you are bringing in. You are including areas in
7 Class II, the water control regions, as well as clean air. You
8 are including everything the Federal Government owns. How many
9 acres is that? I have seen some horrendous numbers.

10 Senator Gravel. My State beefs it up quite a bit.

11 Senator Muskie. This means every acre of Federal land
12 wherever it is located, midtown Manhattan or everywhere else.

13 Mr. Cummings. This corresponds to a direction in the
14 Senate report that Federal land managers should review their
15 lands and nominate lands that are appropriate for such protec-
16 tion.

17 Senator Muskie. That is a different effect than the
18 Senate report.

19 Mr. Cummings. That is true.

20 Senator Gravel. This is only for lands that are cleaner
21 than secondary standards.

22 Senator Muskie. That doesn't say so.

23 Senator Gravel. Well, we can put it in. I have no problem
24 with that.

25 Senator Muskie. I think if you put in all other lands,

vf 3 1 that somewhere in the report you ought to indicate what it is
2 that you are mandating the review for because you are talking
3 about millions and millions of acres of land, I assume.

4 If you are going to impose that kind of a burden on the
5 bureaucracy, then you are going to minimize the staff and
6 energies available to focus on the areas we really want to
7 protect.

8 It seems to me we ought to find a way of excluding those
9 areas that we know are not going to be included as Class I
10 areas.

11 Senator Gravel. We can work on that.

12 Senator Domenici. I didn't want to interrupt, if Senator
13 Gravel has some more.

14 Senator Gravel. Oh, no.

15 Senator Muskie. Why don't we let Senator Gravel proceed
16 and present his whole case? I apologize for interrupting you.

17 Senator Domenici. Maybe I ought to stop and ask if I could
18 talk to the first issue. I am looking at this sheet of yours,
19 the comparison, not your narrative.

20 The second box, you have got discretionary Class I design-
21 nation, existing national recreation areas, wild and scenic
22 rivers, and so forth.

23 Did I understand you to say in your narrative that those
24 would be Class I and there be discretion to move them to II?

25 Senator Gravel. Yes, by the governor.

vf 4 1 Senator Domenici. I want to say this: I know of no new
2 evidence, I respect that the Senator from Alaska in his efforts
3 to try to modify and amend, because that is what we are here
4 for, but regarding that issue, there is nothing new that has
5 developed.

6 My recollection is that in this committee that issue on a
7 much more limited basis was argued in detail and defeated. It
8 was narrowed down to just national monuments and defeated.
9 There was an effort on the floor of the Senate to amend that to
10 include national monuments by the distinguished Senator from
11 Oregon, and it was defeated.

12 In conference, there was a strong effort to broaden Class
13 I, the inception of Class I's, what are they going into the
14 plan, and the Senate held tough and it was defeated.

15 We have no idea, starting here today, what it will mean to
16 the States in this nation to put no significant deterioration in
17 place and say all of those are Class I and now go through the
18 process of taking them out.

19 We had arrived at an approach that said the Federal Govern-
20 ment's role is to pick the ones we clearly want and then provide
21 for a process of moving upward so that a State could look at its
22 overall plan and not have a scenic river that who knows where it
23 begins and ends in respective States. Tennessee has the prob-
24 lem; a number of them do.

25 We are falling prey to exactly what we have been accused of

vf 4 1 by propaganda if we put this in. It will be argued that it is
2 only discretionary and can be taken out; but we argued that
3 issue, too. We argued that issue in-depth.

4 I would even remind the committee that an effort to put in
5 merely national monuments, rather than all these, has failed in
6 this committee. I think somebody will be offering that again.
7 I think that is deserving of debate.

8 But to start a new plan which takes Class I's and modifies
9 them under the guise of semantics, as I see it, to merely say
10 we are not really serious about it, we are just putting them
11 in, somebody can take them out, is changing the whole thrust of
12 the Senate bill and of the conference report with reference to
13 Class I's.

14 From my standpoint, I think it does great violence to the
15 orderliness and scheme of things that was propounded after
16 months of debate and discussion. I do not say that with refer-
17 ence to his next one, the review of Federal lands.

18 If in fact we want to give governors more unilateral power
19 to move things into Class I, that fits the scheme of things, as
20 I understand it, because we really wanted States to take a look.
21 And if it is constitutional for governors to by themselves put
22 Federal land into Class I, I don't think I am going to object
23 to that.

24 The next category that he is talking about in this, to
25 broaden Class I's, the way we have here, I think fractures

1 irreparably the scheme and I submit, to a significant degree,
2 the support for no significant deterioration.

3 Senator Hart. I interrupted Senator Gravel. He was going
4 item by item. I think we should permit him to finish it. Then
5 you can debate the concept of your proposal.

6 Senator Gravel. One quick word to Senator Domenici, it
7 was rejected last year and it was a fairly close vote, 7 to 6,
8 in the committee. I don't think it is totally resolved. It is
9 fair to bring it back up after I finish the proposal, and then
10 you can make comments on the various facets of it, or I would be
11 happy to vote on it one at a time.

12 Senator Hart. There is a natural break at the top of
13 page 2. Why don't you describe it down to there and then we
14 will discuss it.

15 Senator Gravel. Okay.

16 Under the designation of the governor's redesignation
17 authority, the Conference Committee bill gave the nations'
18 governors the authority to redesignate certain Class II areas
19 as either Class I or Class III. In general, most Federal lands
20 would have been subject to the governor's redesignation author-
21 ity.

22 This provision, of course, was strongly supported by the
23 States, especially those which have large tracts of Federal
24 lands within their borders. The Senate bill allowed States to
25 redesignate only from Class II to Class I, and on Federal lands

1 concurrence from the Federal land manager was required. My
2 amendment adopts the principle established in the Conference
3 Committee bill.

4 The next item is the designation of certain national
5 interest lands. This may be more germane to the State of
6 Alaska because of our D-2 problem which the Congress is going
7 to have to adjudicate in the Native Land Claims Act.

8 The Secretary is required to withdraw lands that he saw
9 fit to fit under the four categories, forests, parks, wildlife
10 and rivers, and refuges. The Secretary has withdrawn somewhere
11 around 80 million acres. There are various pieces of legisla-
12 tion driving it up to almost 140 million acres. The Congress
13 has until the end of Congress to adjudicate the problem.

14 Under the Senate-passed bill, national interest lands which
15 would be created after passage of the Clean Air Act, which would
16 be our case, amendments would be designated as Class I or Class
17 II by Congress.

18 The conference bill initially designated new national parks
19 and wilderness areas as Class II, but granted the governor the
20 authority to redesignate them to Class I.

21 My amendment would allow new national parks, wilderness
22 areas, preserves, primitive areas, lakeshores, seashores, wild
23 and scenic rivers, and monuments to be designated as Class II.

24 Within 18 months of the creation of such areas, the Federal
25 land manager would study the areas and recommend to the governor

vf 7

1 those which he believe should be redesignated as Class I.
2 After a public participation process, the governor would
3 make his designation. Obviously, the decision is with the
4 governor.

5 Senator Hart. I think that is a natural break. Any addi-
6 tional explanation of the overall proposal, Mike?

7 Senator Gravel. No. I think it is clearly understood.
8 The ground has been covered before.

9 Senator Hart. Any response?

10 Senator Gravel. No. That is the not most important item
11 to me. The last item is one I would feel strongly about, the
12 third one, the governor's redesignation authority. I think it
13 is very important to us.

14 Senator Domenici. Which one?

15 Senator Gravel. The third one, the governor's redesigna-
16 tion authority, and the other provision with respect to D-2's,
17 would be the ones that I think are vital, from my specific
18 interest. I certainly wouldn't die over loss of the first one,
19 but on a vote I would vote for the first one.

20 Senator Hart. They are really five separate proposals,
21 one of which changes nothing; that is to say, it ratifies the
22 provision of the bill that we are discussing now, 252. The
23 controverisial or change areas are items 2, 3, 4, and 5.

24 I think we can take them one at a time for any additional
25 discussion in separate votes. Is that all right?

vf 8 1 Senator Gravel. That is fine.

2 Mr. Cummings. Senator, on your governor's redesignation
3 authority, that accepts or includes the concept that there are
4 native Class III designations. I gather the committee is not at
5 that point yet. You haven't addressed that question to the
6 committee.

7 Without that, without Class III, isn't it essentially the
8 same as the principle in your second and third proposals that
9 the governors have unilateral authority, final authority to
10 designate?

11 Senator Gravel. Yes.

12 Senator Burdick. On three where you have the right to
13 review all the Federal land, does that include fish and wildlife
14 areas?

15 Senator Gravel. Yes.

16 Senator Burdick. You have added that to monuments and
17 primitive areas, and so forth. What is your thinking about
18 that? Why did you add fish and wildlife areas? The essence
19 of the change is you have added fish and wildlife lands. They
20 are scattered all over the West.

21 Senator Gravel. Are you talking about discretionary
22 review?

23 Senator Burdick. Review. The conference bill limited it.
24 Now you have broadened it.

25 Senator Gravel. We broadened it to all Federal lands.

vf 9 1 Senator Muskie found problem with that. The thought was in that
2 18-month period that you have a real look see with inventory.

3 My view is it is stuff that is above Class II. So it would
4 just be a real quick inventory of everything that the Federal
5 establishment has to see if it should be included. We are mak-
6 ing a decision in one, what we think our judgment is; but there
7 may be other lands that should --

8 Senator Burdick. You have fish and wildlife lands
9 scattered all over the State.

10 Senator Gravel. I don't have anything here to lock up
11 any statement.

12 Senator Muskie. But you initiate that.

13 Senator Gravel. The governor would make the final decision.

14 Senator Burdick. Like last year, we didn't include fish
15 and wildlife.

16 Senator Muskie. Could I ask the staff to refresh my recol-
17 lection? Under the Senate bill, let me say that I started this
18 consideration of this issue, but declined to support the Senate
19 provisions on this.

20 We did agree, Senator Domenici, that last year we went
21 through this thing painfully and agonizingly over weeks and
22 months. We finally came up with a formulation of the Senate
23 bill and was able to gain the support of, I think, of this
24 committee.

25 We went to the Senate. We had, I guess, the most

1 controversial debate on the Senate floor on the nondesignation
2 provision and we were able to sustain the committee provision.
3 Then we were able to go to conference with the Senate bill and
4 work out a livable compromise with the House.

5 Because of the success of that formulation with a very
6 controversial issue, I am inclined to stick with success. That
7 worked. If we had not been filibustered at the end, the
8 Congress would have approved the conference provision. I don't
9 think really there have been any additions to our knowledge or
10 our insights with respect to this issue that change the essen-
11 tial facts, which we must reflect in our policy.

12 So this doesn't prejudice Senator Gravel's position. I
13 just want to make clear that I start with the prejudice on the
14 side of what we have done in order to minimize the time delay,
15 in order to avoid a long, drawn-out debate on this and, so on.

16 Moreover, my own preference would be to see the Senate bill
17 reenacted so that we can go into the House and there have
18 another look at the compromise that we expect to give the House.

19 The House presumably would come down pretty much with what
20 they approved in the first place and do a conference on what we
21 approve. There would be enough latitude then to take a relook
22 of the last year's compromise.

23 I know the time it took us over the last two years. I sure
24 don't want to wait until the closing weeks of this Congress and
25 find ourselves filibustered to death again on this issue. This

f 11 1 was the issue that contributed to the demise of last year's
2 clean air bill.

3 Senator Domenici. Not the auto standards?

4 Senator Muskie. Not the auto standards, although I think
5 they added their weight; but this was the issue around which
6 they rallied to kill the bill. So I am reluctant to make any
7 significant changes on what we do.

8 With that as background, I ask the staff this question:
9 What is the provision in the Senate bill to add Class I areas?

10 Mr. Braithwaite. There is no provision for the Federal
11 land manager to initiate the designation of Class I areas in
12 the Senate bill. The power to initiate that process lies with
13 the State under the Senate bill. The Federal land manager must
14 then concur, if the State initiates this action.

15 That doesn't preclude the Federal land manager from
16 suggesting to a State that they might examine that informally;
17 but he has no standing to initiate that process under the Senate
18 bill.

19 Senator Muskie. Under the Senate bill, we have Class I
20 designations of the Senate bill and any addition of that is
21 totally within the discretion of the State.

22 Mr. Billings. With the concurrence of the Federal land
23 manager.

24 Senator Gravel. The key thing with my proposal is that it
25 can be done without the concurrence of the Federal land manager.

vf 12 1 That is the text of the whole difference. If the State wants
2 to move some of its lands that are Federal lands to a Class I
3 area, it can do so unitaterally.

4 Senator Muskie. What do you do in the instance where a
5 Federal land lies in more than one State?

6 Senator Gravel. That part of the land that lies by the
7 State can be moved in by the governor and that part that lies
8 in the other State can stay wherever it is.

9 Senator Muskie. There would be two different values with
10 respect to two States, of a park.

11 Senator Gravel. Yes.

12 Senator Muskie. That is the provision of the Senate bill.

13 Mr. Braithwaite. There is the requirement of the bill that
14 the Federal land manager has the responsibility to protect the
15 air quality of his land; but that is a general charge given to
16 him. He has no mechanism in the Senate bill to initiate the
17 proceeding.

18 Senator Gravel. We are the only ones to do it.

19 Senator Muskie. What is the provision of the Senate bill
20 with respect to the establishment of new Federal lands of any
21 kind, as parks, wilderness areas, primitive areas, lakeshores,
22 seashores, whatever? What is the provision of the Senate bill
23 with respect to those, as we create them?

24 Mr. Billings. With respect to each new national park and
25 national wilderness area which exceeds 5,000 acres, they shall

1 be classified as either Class I or II by the Congress in designating such park as a wilderness area.

2 Senator Hart. At the time of the legislation.

3 Senator Domenici. What committee would that go to?

4 Senator Muskie. Interior.

5 Senator Gravel. We would be giving up jurisdiction. In this case, we would have public hearings and the governor would have the final decision and the Federal land manager would conduct the studies and he would make a recommendation.

6 Senator Muskie. It is conceivable that Congress might decide to classify as Class I because of the value to create the area in the first instance and it might not be designated by the State as Class I.

7 Senator Hart. Is that an accurate analysis?

8 Senator Gravel. I think it is.

9 Senator Hart. Should we proceed to vote on this? Mike, roll call?

10 Senator Gravel. I think roll call would go quickly.

11 Senator Hart. Mr. Chairman, Senator Gravel has requested a roll call vote on the Nos. 2 through 5 portion of his proposal. I think we are prepared to vote.

12 Senator Randolph. The Chair is prepared to vote.

13 Senator Domenici. In block or separate?

14 Senator Gravel. I think if we could vote once, "I vote for Nos. 2, 3, 4, 5."

vf 14 1 Senator Hart. I think the mathematics would make it
2 difficult.

3 Senator Gravel. Okay.

4 Senator Hart. This is Item No. 2, discretionary Class II
5 designations, Gravel substitute for the Senate Bill -- well, it
6 is an addition because there is no provision covering this in
7 the Senate Bill.

8 Senator Anderson. Senator Muskie, as I listen to your
9 voting --

10 Senator Muskie. I am voting against all of them.

11 Senator Hart. Without prejudice to Senator Gravel.

12 Senator Randolph. Is there objection, Gary, to the vote
13 on each item?

14 Senator Hart. No. That seems to be the only way to do
15 it.

16 Senator Gravel. That is fine with me.

17 Senator Randolph. You have a package, but it is broken
18 into subject matter. Is that agreeable to you, Ed?

19 Senator Muskie. Fine.

20 Senator Randolph. Would you announce the number one item?

21 Mr. Yago. On the first page, entitled "Discretionary
22 Class I Designations."

23 Senator Randolph. Is there any question? Call the roll,
24 please.

25 Mr. Yago. Senator Anderson?

vf 15

1 Senator Anderson. This is on the first amendment?
2 Mr. Yago. The second item on the sheet.
3 Senator Anderson. No.
4 Mr. Yago. Senator Baker?
5 Senator Domenici. No, by proxy.
6 Mr. Yago. Senator Bentsen?
7 Senator Burdick?
8 Senator Burdick. No.
9 Mr. Yago. Senator Chafee?
10 Senator Chafee. No.
11 Mr. Yago. Senator Culver?
12 Senator Domenici?
13 Senator Domenici. No.
14 Mr. Yago. Senator Gravel?
15 Senator Gravel. Aye.
16 Mr. Yago. Senator Hart?
17 Senator Hart. Aye.
18 Mr. Yago. Senator McClure?
19 Senator Domenici. No, by proxy.
20 Mr. Yago. Senator Moynihan?
21 Senator Gravel. Aye, by proxy.
22 Mr. Yago. Senator Muskie?
23 Senator Muskie. No.
24 Mr. Yago. Senator Stafford?
25 Senator Stafford. No.

vf 16 1 Mr. Yago. Senator Wallop?

2 Senator Randolph?

3 Senator Randolph. Aye.

4 Mr. Yago. The amendment fails to carry by a vote of four
5 to eight.

6 Senator Randolph. Four for the amendment; eight against.

7 Proceed to the second item. Let's have it announced so it
8 will be understood for the record.

9 Mr. Yago. It is the one at the bottom of the first page
10 entitled "Review of Federal Lands for Additional Potential
11 Class I Areas."

12 Senator Randolph. Before you call the roll, I want to be
13 very careful to preserve the rights of Senators who are not
14 here. Are we continuing as we have generally? Has there been
15 an objection to permit those members not present to vote on any
16 roll call? Bob, is there any problem here?

17 Senator Stafford. Only if it would change the result.

18 Senator Randolph. I understand that, but we should add
19 that. That would not be so in this case, is that correct?

20 Senator Muskie. Yes.

21 Senator Randolph. Is that correct?

22 Senator Muskie. You are right.

23 Senator Randolph. I am trying because we have at least one
24 member who is ill and cannot be here. I would like to preserve
25 the opportunity for him, whatever the reason.

vf 17 1 Mr. Yago. This is on the Class I review amendment.
2 Senator Anderson?
3 Senator Anderson. No.
4 Mr. Yago. Senator Baker?
5 Senator Domenici. No, by proxy.
6 Mr. Yago. Senator Bentsen?
7 Senator Burdick?
8 Senator Burdick. No.
9 Mr. Yago. Senator Chafee?
10 Senator Chafee. Aye.
11 Mr. Yago. Senator Culver?
12 Senator Domenici?
13 Senator Domenici. No.
14 Mr. Yago. Senator Gravel?
15 Senator Gravel. No.
16 Mr. Yago. Senator McClure?
17 Senator Domenici. No, by proxy.
18 Mr. Yago. Senator Moynihan?
19 Senator Gravel. Aye, by proxy.
20 Mr. Yago. Senator Muskie?
21 Senator Muskie. No.
22 Mr. Yago. Senator Stafford?
23 Senator Stafford. No.
24 Mr. Yago. Senator Wallop?
25 Senator Randolph?

vf 18

1 Senator Randolph. Aye.

2 Mr. Yago. The amendment fails by a vote of four to eight.

3 Senator Domenici. What was the vote, Mr. Chairman?

4 Senator Randolph. Four to eight.

5 Senator Stafford. Senator Wallop has just arrived.

6 Senator Domenici. Senator Wallop wanted to be recorded.

7 Senator Wallop. It would be no.

8 Mr. Yago. On both cases, Senator?

9 Senator Wallop. Yes.

10 Senator Randolph. So it would be four to nine in both
11 cases.

12 Senator Domenici. I have a question on this one. My
13 intuition tells me this is good, but I don't understand how we
14 can have a Class III in the bill when we don't have one. That
15 is the part that is bothering me. On is summary sheet, it says:
16 "Except certain Federal lands cannot be redesignated as Class
17 III." I don't think we have any Class III.

18 Mr. Billings. Senator, as you go down beyond the five
19 items, Senator Gravel's proposal would add Class III, the same
20 as the conference bill -- Item 4 on page 2 of the comparative
21 sheet.

22 Senator Gravel. In order to win your support, I would be
23 happy to drop that, since I haven't been batting all that well.
24 It would just be take out, "Except certain Federal lands cannot
25 be redesignated as Class III." We would just sacrifice that

vf 19 1 part of it.

2 Senator Domenici. We just take Class III out of the dis-
3 cussion?

4 Senator Gravel. Yes.

5 Senator Domenici. With that, would you tell me what it
6 does, again?

7 Mr. Billings. The effect of that change would then mean
8 the governor could unilaterally without Federal concurrence move
9 a Class II area to Class I. That was in the conference port.

10 Senator Muskie. At this point, I can see no objection to
11 that. I would be prepared to support it. I think that is a
12 minimal kind of change in terms of preserving the Senate con-
13 cept, preserve States rights and the idea of letting the States
14 protect more lands if they want to.

15 Mr. Chairman, I would support that amendment as changed.

16 Senator Randolph. Let the record indicate in our discus-
17 sions with the Governor of West Virginia and Mr. Rockefeller,
18 that is his feeling that it is protective for the State, but
19 really an upgrading for the responsibility of the State.

20 Senator Muskie. That sounds good to me.

21 Senator Gravel. I draw a voice vote on that one.

22 Senator Muskie. I think you may win.

23 Senator Domenici. You ought to get a roll call.

24 Senator Gravel. Have a roll call.

25 Mr. Yago. Senator Anderson?

vf 20 1 Senator Anderson. Aye.
2 Mr. Yago. Senator Baker?
3 Senator Bentsen?
4 Senator Burdick?
5 Senator Burdick. Aye.
6 Mr. Yago. Senator Chafee?
7 Senator Chafee. Aye.
8 Mr. Yago. Senator Culver?
9 Senator Domenici?
10 Senator Domenici. Aye.
11 Mr. Yago. Senator Gravel?
12 Senator Gravel. Aye.
13 Mr. Yago. Senator Hart?
14 Senator Hart. Aye.
15 Mr. Yago. Senator McClure?
16 Senator Moynihan?
17 Senator Gravel. Aye, by proxy.
18 Mr. Yago. Senator Muskie?
19 Senator Muskie. Aye.
20 Mr. Yago. Senator Stafford?
21 Senator Stafford. Aye.
22 Mr. Yago. Senator Wallop?
23 Senator Wallop. Aye.
24 Mr. Yago. Senator Randolph?
25 Senator Randolph. Aye.

vi 21 1 Senator Domenici. I would like to vote Senator Baker
2 by proxy, no.

3 Mr. Yago. Eleven to one.

4 Senator Gravel. This next one is really important to
5 Alaska because of the situation. From what we can find out,
6 this doesn't apply to any other area, except Alaska, because of
7 its unique situation of declaring these lands. I think it would
8 be better advice for this committee to make this kind of a
9 judgment rather than have the Congress to take it up, which it
10 won't take up today with any definitiveness, the determination
11 of the various kinds of lands that will be adjudicated come the
12 end of this Congress.

13 Mr. Cummings. Senator, there are wilderness areas, primi-
14 tive areas, lakeshores and seashores that are proposed for other
15 parts of the country. This would affect those areas as well.

16 Senator Gravel. What size are they? They are not very
17 big ones.

18 Mr. Cummings. They don't compare to the size lands -- I
19 understand that.

20 Senator Domenici. Mr. Chairman, I don't follow. Could
21 you tell us about this again?

22 Senator Muskie. Could I put a question to Senator Gravel?

23 Senator Hart. I think Pete is having trouble hearing what
24 is going on down here.

25 Senator Muskie. This is the first time in our long

vf 22 1 relationship, Pete, that you have ever complained about not
2 being able to hear me.

3 Senator Domenici. That is right, Mr. Chairman. You know
4 that I want to hear you so bad that --

5 Senator Randolph. Plamenso, he said, debate, discussion
6 could often change his mind, but not his vote.

7 Senator Domenici. I trust the good Senator doesn't think
8 that is the case with me.

9 Senator Muskie. The question I was going to raise with
10 Mike, since he has just won an overwhelming vote on a provision
11 that gives governors the authority to upgrade Class II areas,
12 it seems to me that that would give him certain measurable pro-
13 tection to do away with establishing Class II's. The governor
14 presumably could take the initiative under his authority to
15 incorporate Class I.

16 Senator Gravel. Except for the specific areas that could
17 be decided upon -- wild and scenic rivers, forests, wildlife
18 refuges and the like. Here is the difference:

19 The Interior Committee would make the judgment when they
20 make the classification as opposed to the governor making a
21 judgment as a result of studies for the Federal establishment,
22 public hearings, and then he would make a final decision.

23 Mr. Billings. Senator, if you deleted the provision of
24 the Senate bill, the new parks and wilderness areas are desig-
25 nated Class I and II by the Congress, you would be deleting the

vf 23 1 amendment that this committee accepted on the floor from Senator
2 Stevens, the effect of which would be to make any future reded-
3 igation of these clean air areas, subject to the provision that
4 was just adopted by the committee.

5 Senator Gravel. But the conference dropped the Stevens
6 amendment. In any event, what we are doing is holding it
7 closer to what the conference decided and that was to try to
8 give the States in question, and this State in particular, more
9 authority, in a broader way, of adjudicating the problem.

10 Mr. Billings. I am not disagreeing with the Senator. I
11 think my having the previous amendment adopted, any of these
12 things newly created, if they are in clean air --

13 Senator Gravel. I would be happy to make this an Alaska
14 provision and only apply it to Alaska so it wouldn't infringe
15 on anyone else's ares.

16 With the hearing process, the governor would be better
17 advised to make the decision, rather than the Interior Commit-
18 tee, which is going to react from public pressure without
19 inspecting the lands in question. A lot of times we make deci-
20 sions that are not all that in-depth.

21 Senator Hart. What is the precedent for carving out the
22 specific States here and, two, would it be so drafted so that
23 if the south didn't want to accept it, we would have to dis-
24 mantle the whole thing or could the Alaska provision be struck?

25 Senator Gravel. From the land point of view, you have more

vf 24 1 land in this section than the whole rest of the bill. If there
2 is a section that warrants attention, this would, from just the
3 sheer size of the land.

4 Mr. Billings. If the Stevens amendment is dropped in 252,
5 then all those Federal lands in Alaska, assuming the air is
6 cleaner than standards, come into Class II automatically. Then
7 under the amendment that the committee just adopted, the gover-
8 nor could unilaterally move them to Class I. That is the only
9 way they could get to Class I.

10 Senator Gravel. No. We are talking about doubling the
11 size of parks. In this legislation, as proposed, when the
12 decision is made, the Interior Committee would then make the
13 clean air --

14 Mr. Billings. If you dropped the Stevens amendment, then
15 the Interior Committee doesn't have that instruction.

16 Senator Gravel. That is true.

17 Mr. Billings. If your motion was to delete the Stevens
18 amendment, then you would have your same effect.

19 Senator Gravel. I would buy that. Let's do the same thing
20 that I am doing. I would move that we strike that and we have
21 report language that would make it abundantly clear that these
22 other points would take place; that we have studies, public
23 hearings --

24 Senator Muskie. Maybe we should indicate what the conse-
25 quence of dropping that language is.

f 25 1 Mr. Billings. Make it the governor's responsibility.
2 Senator Muskie. I second that and suggest a roll call
3 vote.

4 Senator Hart. Do we need a roll call vote on report
5 language?

6 Mr. Billings. You are deleting Subsection 110(g)(1)(B)
7 from S. 252 which says: "Each national park and national wil-
8 derness area, or any part thereof, which exceeds 5,000 acres in
9 size, established after the enactment of the Clean Air Amend-
10 ments," by Congress.

11 It is on page 12 of S. 252. It was the amendment that the
12 floor manager accepted from Senator Stevens who dealt with the
13 similar kind of problem, which has been resolved by the previous
14 amendment.

15 Senator Domenici. Mr. Chairman, I have a question about
16 this. In my original proposal on nondegradation, my whole
17 scheme was that the governors and States were to have maximum
18 authority and somewhere in the shuffle, the governor's redesign-
19 nation authority was lost. You put it back in with your last
20 amendment. The thrust is consistent, but let me ask this:

21 It appears that there is some merit to having the Congress
22 designated at the inception and then let the governor's redesign-
23 nation authority, which we have just approved, take place. I am
24 thinking that maybe a compromise would be to say that the
25 Congress shall designate it, but shall take into consideration

the recommendation of the governor of that State.

My thinking is that the redesignation authority that we have given the governor provides for the hearing process that would take place out there with the people. I believe that that is the best approach to changing things around. I think if you are going to go in at the inception with the governor having all full authority, he would have no requirement to have any kind of hearings at all.

He would get his way kind of ab initio in this thing; whereas if we left the governor's redesignation authority, the one that he would utilize in the field with the people, but say Congress would take his recommendation when they make the original decision, then I think you are apt to get more of the play that the arena of people interested would bring when he attempts to redesignate.

I am not so sure we ought to have the governor doing it initially because there would be no hearings at all from the people on that point, but his redesignation would.

Senator Muskie. Would you require that the governor hold hearings?

Senator Domenici. You could.

Mr. Billings. That is part of the Senator's amendment, that the governor would be required to hold hearings before he redesignates. As to the second part of your point, there is no way that this piece of legislation can bind future act. of

vf 27 C 1 Congress.

2 In other words, if at a subsequent date either the Interior
3 Committee or this committee should decide to designate a park
4 that was added to the sytem as something different than a Class
5 II, that would be within the prerogatives of the Congress and
6 not in any way affected by this legislation.

7 Senator Domenici. Fine, but there is a hearing required
8 before he would make that decision.

9 Senator Gravel. Would you reexplain it to me now? When
10 we defined these new lands, the Congress is going to do what
11 now?

12 Mr. Billings. The Congress doesn't have to do anything.
13 Under the legislation, if the Stevens amendment is deleted, the
14 Congress doesn't have to do anything and by the fact of not
15 doing anything, these lands will be Class II.

16 Senator Gravel. That is fine.

17 Mr. Billings. Then they can be redesignated as Class I,
18 but there is no way that this committee or the Congress can
19 bind a future congressional action which changes that.

20 Senator Gravel. Fine. I just want to give notice, I am
21 going to try to get a full referral of the D-2 issue to this
22 committee because of this very issue, clean air, clean water.
23 They are all coming to focus in our virgin areas right now.
24 I am satisfied with the compromise.

25 Mr. Billings. You need a vote on the Stevens amendment.

vf 28 1 Senator Hart. Mr. Chairman, I think we are ready to vote.
2 Mr. Yago. Senator Anderson?
3 Senator Anderson. Aye.
4 Mr. Yago. Senator Bentsen?
5 Senator Burdick?
6 Senator Chafee?
7 Senator Domenici. Aye, by proxy.
8 Mr. Yago. Senator Culver?
9 Senator Domenici?
10 Senator Domenici. Aye.
11 Mr. Yago. Senator Gravel?
12 Senator Gravel. Aye.
13 Mr. Yago. Senator McClure?
14 Senator Domenici. Aye, by proxy.
15 Mr. Yago. Senator Moynihan?
16 Senator Gravel. Aye, by proxy.
17 Mr. Yago. Senator Muskie?
18 Senator Muskie. Aye.
19 Mr. Yago. Senator Stafford?
20 Senator Stafford. Aye.
21 Mr. Yago. Senator Wallop?
22 Senator Wallop. Aye.
23 Mr. Yago. Senator Randolph?
24 Senator Randolph. Aye.
25 Senator Domenici. Senator Baker; aye, by proxy.

vf 29

1 Mr. Yago. Twelve to nothing.

2 Senator Gravel. I would drop everything in my proposal
3 except the item on page 3, BACT. We could touch it right now
4 or come back to it later.

5 Senator Hart. I am trying to determine what the appropri-
6 ate time on the agenda is.

7 Mr. Billings. It would seem to be appropriate now.

8 Senator Hart. I have an up and down vote on the monuments
9 proposal.

10 Senator Gravel. Maybe the staff can give an explanation
11 of this.

12 Mr. Billings. We can define the issue as to what the
13 differences are. Last year the Senate-passed bill on the con-
14 ference report required that the compliance with nondegradation
15 would include the application of emission limitations based on
16 the maximum degree of emission reduction which was achievable
17 through the use of control technology, taking into account
18 economic energy and other considerations, as determined by the
19 States on a case-by-case basis.

20 The Gravel amendment, as I understand it, would simply
21 change that definition to provide the best available control
22 technology for the purpose of nondegradation which would be
23 defined by the Administrator so as to provide a uniform
24 national, best available control technology definition as
25 opposed to the potential for having different State-by-State

judgments.

Under last year's bill, the floor for best available control technology were the Federal new source performance standards, recognizing that many States had gone beyond new source performance standards in the application of best available control technology for facilities in their States.

The common reference was to those States in the West where we are requiring scrubbers on no sulfur coal, which required a considerably greater degree of control, especially in Wyoming, Montana, New Mexico, than that which would be required to achieve Federal new source performance standards.

The Gravel amendment would require that the definition of best available control technology be made for the purpose of nondegradation by the Administrator. I suspect, however, that it would not interfere with the right of the State to still go beyond that as provided and assured in Section 116.

Is that correct?

Senator Gravel. That is correct.

Senator Muskie. Is it conceivable that given the different environmental conditions, that best available control technology might legitimately be different in different areas? I am not talking about continuous emission versus intermittent, but is it conceivable?

Senator Gravel. Very much so.

Senator Muskie. If there is such a possible difference,

vf 31 1 does this amendment take those into account?

2 Senator Gravel. No. This would set a floor and obviously
3 it has some areas, if States want to do more than this, that
4 they certainly can.

5 Senator Muskie. I am not talking about more or less. I
6 am talking about different.

7 Mr. Billings. I am not sure. I don't think it has ever
8 occurred to us before.

9 Senator Muskie. Take the automobile, for example. I take
10 it Gary Hart's is a high-altitude area. It requires a different
11 technology to meet the same standards related to auto pollutants
12 as in a lower area. That is a legitimate environmentally dic-
13 tated technological answer.

14 You are the technicians. You have all the wisdom here.
15 I am just asking you whether you know there could be a different
16 technological definition of the best available control technology
17 given such differences in the environment.

18 Mr. Billings. No. The automobile is designed for sea
19 level and it operates differently at high altitude because of
20 barometric pressure. It is obviously possible. It has never
21 come to our attention.

22 Mr. Brayman. There might be problems such as the availa-
23 bility of water for scrubbers that conceivably in one area you
24 might have very short water supplies and, therefore, you might
25 get into a bind where a certain scrubber system would not be

vf 32 1 "available" because of water supplies; where in another area it
2 would be.

3 But I don't think that is a major problem. That is the
4 only kind of thing we can suggest.

5 Mr. Billings. I think that this amendment, in part,
6 relates to that which was finally agreed upon in the conference,
7 where after a great deal of debate, a modified version of the
8 House amendment to the new source performance standards section
9 was adopted which required that new source performance standards
10 actually be the best available control technology.

11 The effect would be to require something greater than new
12 source performance standards across the board. It seems to me
13 that it is difficult to consider this amendment outside the
14 context of that definition of best available control technology.

15 How the committee either resolves changing its definition
16 of best available control technology or avoids that issue and
17 resolves it in the conference might be a way of dealing with
18 this issue. It is a logical amendment with respect to the House
19 provision, but it doesn't have an antecedent in this bill.

20 Senator Gravel. It is still logical as the bill, per se.

21 Mr. Billings. Yes.

22 Mr. Braithwaite. The effect of this bill without the new
23 source performance standards would be essentially the regula-
24 tions now where EPA defines best available control technology
25 as the new source performance standards, which I understand is

vf 34 1 in that we don't intend to eliminate those wherever we took the
2 standard making power?

3 Senator Gravel. Not at all.

4 Senator Domenici. Then it seems to me we have almost the
5 same problem that we have on new source performance as defined
6 by the House in their bill. We really don't intend that they
7 set standards of achievement that are the same everywhere with
8 reference to percent cleanup, do we? If we do, we have com-
9 pletely changed the notion of best available control technology
10 for nondegradation because that isn't a relevant issue in non-
11 degradation.

12 It may be -- and we have an argument on that in terms of
13 national attainment of clean air, that I don't want -- but maybe
14 the Administrator is going to be given the authority to have 90
15 percent clean up as part of a new source performance, the per-
16 cent of dirt coming out, which greatly penalizes sulfur as com-
17 pared with dirty sulfur.

18 I don't think we ought to confuse it. It never was intended
19 under best available control technology for nondegradation, new
20 major source emitters.

21 Mr. Billings. The Senator is correct. The increment,
22 the measure of change in air quality is what is going to deter-
23 mine the level of control that is required. Theoretically, what
24 will happen is a source coming into apply for a permit will say
25 this is the level of control that we propose to achieve in order

vf 35

1 that we do not exceed the incremental number that you have
2 assigned to this facility.

3 The percentage reduction in that case would not be relevant
4 because that would depend in part on the size of the facility.
5 So the best available control technology in the real world is
6 going to be as little technology or as much technology as it
7 takes to get under the incremental numbers.

8 One of the theories of the increments in the Act is to
9 force technology to cause better technology to be used by saying
10 that there is only so much air out there that you can pollute.
11 Even under the most idealistic conditions, the purpose and the
12 effect of this amendment should be to have different levels of
13 control in different places, relative to the amount of air
14 quality that is available to be consumed by the new facility.

15 Senator Domenici. So what we are really saying, as I
16 understand it, some States would prefer to have EPA do the
17 technical work on defining and arriving at the best available
18 control technology within the congressional intent, rather than
19 have each State have to go through that kind of technological
20 determination?

21 Mr. Billings. That is correct; but in the final analysis,
22 EPA, A, might not be able to locate because of the amount of
23 increments available; and, B, the State may want to go further
24 than that, anyway, because of their own specific values, what-
25 ever they happen to be.

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1 As I understand Senator Gravel's amendment, neither of
2 those things would be changed by it; but it still lacks the
3 antecedent of the House best available control technology pro-
4 vision which is what, I think, it relates to.

5 Senator Domenici. Mr. Chairman, if we are clear and can
6 make it understood that this is completely different from new
7 source performance, either in our bill or in the conference
8 report, and address issues as we put them here this morning, I
9 would support it. My own State has been an advocate. I think
10 EPA Could do a better technical job of setting the definition.

11 Senator Gravel. Fine. I would buy that.

12 Senator Hart. Are we prepared for a vote? We need a roll
13 call.

14 Mr. Billings. Excuse me, Senator. I don't think we can
15 write what you just said.

16 Senator Domenici. Well, I will write it. Tell us what is
17 wrong.

18 Mr. Billings. The problem is, if the committee is instruct-
19 ing the staff to spell out Senator Gravel's amendment, then we
20 need to look at the House best available control technology
21 section. Is the committee going to wait to vote on the confer-
22 ence?

23 Senator Gravel. I hope to go to conference with it.

24 Mr. Billings. In that event, I think we ought to look at
25 the House best available control technology issue.

vf 37 1 Mr. Brayman. The floor in the Senate language now is new
2 source performance standards. Is your description essentially
3 raising that floor to something that EPA's technical people
4 would look at, or altering the floor that the States would use?
5 Is that correct?

6 Senator Domenici. No.

7 Senator Hart. One person is wagging his head yes and the
8 other one no. Senator Gravel is wagging his head yes and Sena-
9 tor Domenici is wagging his head no.

10 Senator Domenici. Mr. Chairman, I would really request
11 at this point that on this issue and the new source performance
12 as defined by the House and in the conference, that we reserve
13 that. I would like to look at it a little bit. It is a very
14 serious issue for many of us.

15 Senator Gravel. We can take it up when we are ready,
16 later on.

17 Senator Hart. Can the staff draft this? Let's have a
18 point of reference to discuss when we are ready to vote on it.

19 Senator Domenici. Can I get kind of a consensus or sense
20 to help the staff? Upon the new source performance definition
21 in the House, as the chairman recalls, we had a very lengthy
22 and heated debate with the House in conference on what their
23 intention was in their new definition.

24 I find serious problems with it because it could be inter-
25 preted to mean that the Director of EPA must, in defining new

vf 38

1 source performance, establish a national homogenous, everywhere
2 the same, percent of cleanup standard. I think that is patently
3 unfair.

4 I am not trying to get any exceptions for anyone, but 90
5 percent cleanup of low sulfur coal going in at .3, 3/10ths of
6 a percent sulfur, is an enormous technological cleanup as com-
7 pared with 90 percent cleanup of two percent or 2.5 percent
8 sulfur coal somewhere else.

9 I don't want to give an unfair advantage to low sulfur coal.
10 I am on record not wanting low sulfur coal from the West to be
11 shipped to the East, but I don't believe there is any relevancy
12 to clean air in mandating the Director of EPA use as a perform-
13 ance that kind of criteria.

14 Senator Muskie. Are we talking about uniformity in reduc-
15 tion or uniformity in results?

16 Mr. Billings. That is the basic disagreement between the
17 House and the Senate has always articulated that its standard
18 of performance results in what actions come out of the staff.

19 Senator Domenici was concerned, and I think rightly so,
20 that the effect of the House bill was to have uniformity of
21 control measures and change in result, depending on what the
22 input was. So you got not a standard of performance, but a
23 technological standard.

24 Senator Domenici. That is correct.

25 Mr. Billings. It is a basic policy question.

vf 39

1 Senator Gravel. The Gravel amendment deals with that.
2 If we say that the number five represents the quality of air
3 that is consistent with the public interest, whether it is
4 health or public welfare, and in one area you have to come down
5 from the number 90, and another area, you have to come down from
6 number 10, does uniformity mean that you are going to use the
7 same percentage figures, 90 as to 10, even though that doesn't
8 give you the five?

9 Ninety percent of 90 is 81. That gets you down to nine.
10 Ninety percent of 10 is nine. That gets you down to one. Five
11 is the number you are striving for.

12 Senator Domenici. That is correct.

13 Senator Muskie. How do we achieve that result?

14 Senator Domenici. The House won't.

15 Senator Muskie. This is kind of a ridiculous situation,
16 isn't it?

17 Mr. Cummings. Senator, I think one difference is that
18 both the new source standards and the BACT requirement for
19 sources going into nondeterioration areas is a floor, a minimum
20 amount of emission control that is required.

21 On top of that, the calculation is made of what other limi-
22 tations may be necessary to stay within the increment or to stay
23 within the ambient standards.

24 One of the most positive features of last year's Senate
25 bill that many critics observed is that it allows States to

vf 40 1 require the maximum technological control as a floor, no matter
2 what the increment would otherwise have dictated and, therefore,
3 made more room in the increment for additional sources and allow
4 the citing sources closer class areas.

5 That same kind of reasoning should require of them
6 the maximum technological control. As Senator Domenici observes
7 does it mean you put scrubbers on low sulfur plants?

8 Senator Domenici. No, it means more than that. It means
9 do you put even more scrubbers on than are required to get the
10 cleanup that you want. That is tied to economics. It isn't
11 just a question of what we want.

12 What we are doing is prejudicing one kind of energy sub-
13 stantially over another, depending on where it is in this
14 country. We are giving an advantage if we set it at the same
15 level, to dirty coal or dirty processes as compared with begin-
16 ning with a cleaner source of energy, and how much must you
17 clean it up?

18 Mr. Brayman. Mr. Chairman, I don't think Senator Gravel's
19 amendment dealt or went to the House language on new source
20 performance standards. As I understand it, it was within the
21 framework of the Senate bill and, therefore, was in effect a
22 raising of the floor calculating what is coming out of the
23 smokestack, not in any way attempting to set a percentage reduc-
24 tion standard which Senator Domenici was talking about.

vf 41 1 It was my impression, and I think Senator Gravel confirmed
2 it, what he in essence is doing is raising the floor. In other
3 words, instead of being allowed one pound of pollutant per hour,
4 you would be allowed maybe a half a pound pollutant per hour.
5 He was not attempting to dictate a technological percentage
6 reduction standard.

7 Senator Muskie. Isn't there a difference between the
8 ambient standard that you want to achieve and the emission
9 standard you want to achieve?

10 Mr. Brayman. Of course.

11 Senator Muskie. It seems to me it makes more sense to
12 look at the smokestack and whatever you need to achieve the
13 number five you ought to require. My notion of new source
14 performance standards is we ought to take advantage of the
15 maximum that technological development makes possible, just
16 as a matter of principle.

17 In the long run, you are going to need more and more air
18 resource to meet the requirements of mankind. You ought to push
19 technology as fast as you can and get to it as fast as you can;
20 but that doesn't mean that you need to put precisely the same
21 technology in your plant to get the same result at the end of
22 the smokestack. That is one of the reasons I asked that ques-
23 tion earlier.

24 Mr. Billings. In fact, you do. If you do, you don't get
25 any innovation in technology.

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1 Senator Muskie. If you do what?

2 Mr. Billings. If you put precisely the same technology
3 in all plants --

4 Senator Muskie. Not if what you require is the maximum
5 media of the public interest. If five represents the most you
6 are going to need to meet the public interest, why shouldn't you
7 set that as a standard? Should you require a tighter restric-
8 tion than that if you don't need it? Are you pushing for zero
9 emissions?

10 Mr. Billings. That is not a bad idea.

11 Senator Domenici. It is a good idea.

12 Mr. Billings. It would be nice to have the technology
13 available to achieve it if you need it.

14 Senator Muskie. You think that is going to be economically
15 achievable, zero emissions, old plants, new plants?

16 Mr. Billings. I didn't say that; but the point I was
17 making is --

18 Senator Muskie. You can't debate one of these policy
19 issues without bringing the others into interplays. You can't
20 discuss this in a vacuum. You are talking about uniformity.
21 The uniformity of what?

22 Mr. Billings. Of result.

23 Senator Muskie. That is related to the health standards
24 you want to meet and secondarily, the welfare standard. Isn't
25 that where the uniformity ought to be? Should we require

vf 43 1 something more than that?

2 Senator Domenici. On new source, that is correct. On
3 nondegradation, it is not necessarily correct.

4 Mr. Braithwaite. Part of the difficulty here is more in
5 the House report than in the House legislative language. The
6 legislative language makes no mention of the percent reduction
7 and simply uses the term best available technological system.

8 The House report carries a lot of language telling what
9 they meant by that, but percent reduction is not meant in that
10 language. The way the House got to the position of wanting to
11 tighten new source performance standards was in the discussion
12 of best available control technology when a number of members
13 found that best available control technology meant that no tech-
14 nology was used at all, that simply low sulfur fuel for pollu-
15 tion control would be necessary in the system.

16 In order to amend that so that some technology would be
17 used in order to protect the increment further, they put in
18 language that required the technological system approach. The
19 report language has caused us great difficulty throughout the
20 conference.

21 Senator Muskie. You start with the fact that there are
22 no thresholds with respect to pollutant impacts, with respect
23 to health or welfare, that has been the thrust for testimony for
24 13 years, there are no thresholds.

25 So when you pick an ambient air quality standard, you are

vf 44 1 sort of arbitrarily establishing a threshold that doesn't exist
2 in the real world; but you have to arrive at it. There is no
3 way conceivably within any expectations of life that any member
4 of this committee has, that we are going to in this society
5 eliminate emissions totally. However I feel that may be theo-
6 retically, you can't.

7 You start with that threshold. We have accepted that since
8 1970. Ambient air quality standards are an arbitrary threshold
9 below which there isn't protection for public health to the
10 extent there is an impact on public health below it. If you
11 start with that, what you are talking about is results in
12 setting a threshold that carries all down the line.

13 Emission standards, if they meet that threshold need, is
14 the emission standard then an arbitrary threshold? If you are
15 talking about uniformity, isn't that the point to which you must
16 direct your attention? So if the emission threshold which flows
17 from the ambient air quality standard threshold mesh and then
18 you can achieve that across the country, haven't you achieved
19 what you need to achieve? Isn't that what we ought to focus on?

20 Mr. Cummings. Senator, for the new sources going in the
21 clean air areas, the way you articulated this question last year
22 was to the extent that you are leaving room for growth, the
23 extent to which you are the first source in, consumes the incre-
24 ment and, therefore, makes it impossible for later sources to
25 come in.

vf 45 1 The committee determined the last time that it was in the
2 public interest to have a maximum degree of reduction from any
3 new source before you considered the increment. That was to be
4 determined on a case-by-case basis rather than a national uni-
5 form that would stay the same for some period of time.

6 Senator Muskie. Is it your conception that there are those
7 who work on technology in this field and they are going to be
8 the people whose pollutants arouse public concern, are they
9 actually going to try to develop new technology that goes beyond
10 the requirements of the thresholds we are talking about?

11 Mr. Cummings. Yes.

12 Senator Muskie. Who is doing that?

13 Mr. Cummings. I think in New Mexico, there are instances
14 of that happening already. There are cases where the stimulus
15 to do that is maybe the opportunity to build a new facility of
16 their own or to stay closer to a sensitive area.

17 Senator Muskie. How do you set a public policy requirement
18 that stimulates that kind of technological development?

19 Mr. Cummings. I think the basic scheme of last year's bill
20 that in each case you derive the maximum reduction in emissions
21 that is possible with demonstrated technology, does that.

22 It is supported by the interest of many industrial groups
23 in lowering their emissions, say, to get into an area where
24 local opposition would otherwise keep them out. Some of these
25 other suggestions about assessing a site near a sensitive

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1 facility, allow the regulators in one State or on a national
2 basis to then look at the best examples of technological growth,
3 maybe the technological breakthroughs that occur and then apply
4 them on a more general basis.

5 Senator Muskie. If that is the effect, whatever public
6 policy mechanism you write into the law provides some stimulus
7 to try to achieve something more than the thresholds required,
8 does that run counter to the objective of uniformity?

9 How can you conceivably write a standard of uniformity
10 into a law when what you are trying to do is get people to do
11 something better than the law requires? You have uniformity
12 that enforces that.

13 If you do that, then what you are trying to do is make
14 everybody do something better than the law requires and how
15 are you going to do that? Doesn't the whole notion of uniform-
16 ity run counter to that?

17 You are saying that communities ought to be able to antici-
18 pate technology that is better than the law requires because of
19 their growth requirements and whatever else. How do you mandate
20 that or how do you produce that on a uniform basis?

21 Mr. Cummings. I think that is the reason that led the
22 Senate to use a case-by-case determination in last year's bill.

23 Senator Muskie. But case by case is, not uniformity.

24 Mr. Cummings. That is correct.

25 Senator Hart. Without limiting debate here, let's try to

sort out where we are in terms of the schedule. We suspend here at 11:00, is that right, in about two minutes? I take it unless there are an awful lot of proxies floating around, the chances of getting a vote on this issue are pretty minimal. We were going to reserve this for some staff.

Senator Domenic. Could I discuss your last observation? I never thought of nondegradation in this manner, but I think it answers one of your questions. This nondegradation doesn't have with it an ambient attainment goal at this point, but rather a ratchetting down and a siting goal that you get within these very stringent increments that we have set.

It is a technology forcing mechanism, per se, because if you are looking at this piece of geography with a protected area here and the economics dictate if you can get it right here, you have a nice economic advantage for the consumers, the utility users, as compared with over here, 150 miles away, then you are going to apply for this site.

Best available control technology is one aspect of the ratchetting in technology, but the other one is the modeling that is going to end up being done to see if you can meet these ratchettted down standards and you are going to force technology well beyond the old new source performances which were aimed at ambient, overall ambient standards, Federal and sometimes State which were more severe.

Senator Muskie. I agree, but it isn't going to happen on

vf 48 1 a uniform basis.

2 Senator Domenici. That is correct, but I would say you
3 are pushing the technology rather significantly by this
4 approach. What we are concerned about now is EPA has been
5 trying to set new source performance standards that have no
6 relationship to these new increments in nondegradation, but
7 rather relate to the ambient requirements in the basic law.

8 Mr. Cummings. I don't think they relate to the ambient
9 requirements necessarily.

10 Senator Domenici. To attain ent ultimately.

11 Mr. Cummings. One of the main justifications for the new
12 source performance standards was in part an economic one; that
13 is, to have a uniform requirement to whatever the similar source
14 would have to meet to avoid shopping for a more convenient
15 floor.

16 Mr. Hart. We are going to have to suspend here.

17 Mr. Brayman. It is the uniformity of the base that he is
18 talking about as to where you set that base.

19 Senator Hart. Mr. Chaixman, may we discuss when we will
20 take up clean air again?

21 Senator Randolph. Yes. That is certainly something we
22 ought to try to determine here, if we possibly can. Before
23 doing that, I believe that members have worked with their staff
24 in the adjustment or readjustment of schedules for this after-
25 noon. I hope that we can meet them.

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1 Your chairman will return at any time this afternoon.

2 Preferably, I would like for us to meet at two o'clock. Senator
3 Anderson, what is your situation?

4 Senator Anderson. Fine.

5 Senator Randolph. Will someone speak for Senator
6 Moynihan?

7 Senator Anderson. I think he will be available.

8 Senator Randolph. Senator Hart, two o'clock?

9 Senator Hart. Yes.

10 Senator Randolph. Ed?

11 Senator Muskie. I may have difficulty. I have two criti-
12 cal things other than this to do. If I can get them done, I
13 can get back for a little while at two o'clock.

14 Senator Randolph. All right, I understand.

15 Senator Domenici? Understanding, of course, I do the
16 movements in and out to see people.

17 Senator Domenici. Do you want to know if we can meet at
18 2:00?

19 Senator Randolph. That is right.

20 Senator Domenici. How long?

21 Senator Randolph. I would like to see if we can finish
22 the bill. This is my hoping. I am not saying that we can do
23 it. I want all members to understand that whatever time is
24 necessary, why, we will continue to take it. I thought if we
25 could take a couple of hours this afternoon, we might do that

1 job, but understanding your problems.

2 Senator Domenici. I can be here for some amount of time
3 at 2:00.

4 Senator Randolph. You understand now we are now going to
5 take two hours or an hour and forty-five minutes on the Employ-
6 ment Act. Senator Burdick, will you come this afternoon at two
7 o'clock?

8 Senator Burdick. Certainly.

9 Senator Randolph. Senator Stafford will be here, The
10 chairman will be here. We are all right then for two o'clock.

11 Senator Hart. The next session is on clean air?

12 Senator Randolph. What do you have scheduled, John, just
13 so we can maybe change something?

14 Mr. Yago. Mr. Chairman, the committee, as the members
15 know, is getting into a time when we have to have hearings on
16 the budget request under current jurisdiction. They are sched-
17 uled for four of the five working days next week. Tuesday is
18 the only free day.

19 Senator Hart. Mr. Chairman, I would like to suggest even
20 though I know it runs into problems --

21 Mr. Yago. Excuse me. Those are all mornings.

22 Senator Hart. I know it runs into problems with Senator
23 Muskie. If possible, we could get a voting quorum here. Then
24 we can try to get back to clean air in the morning.

25 Senator Muskie. I can't be here.

vf 51 1 Mr. Yago. Friday is open.

2 Senator Hart. Friday morning?

3 Senator Muskie. Tomorrow morning is open, but not tomorrow
4 afternoon. I would recommend that you go ahead. The committee
5 has got this issue well in hand. I doubt very much, although I
6 am sure we will have extensive debate, I think there are a lot
7 of issues that can be decided tomorrow that don't require my
8 involvement. If you get a quorum tomorrow morning, I urge you
9 to proceed. I will leave my proxy.

10 Senator Hart. I think we can go ahead and vote tomorrow
11 morning.

12 Senator Randolph. Let's think in terms then of tomorrow
13 morning and Friday morning.

14 Senator Hart. Or even the afternoon.

15 Senator Randolph. I don't know what the situation is, but
16 we are in session tomorrow. We meet tomorrow afternoon on the
17 organization of the committee itself. I will try to arrange
18 whatever I can, with the understanding of the members.

19 (Whereupon, at 11:05 a.m., the committee recessed, to
20 reconvene at 11:10 a.m., the same day, to take up the matter of
21 the Public Works Employment Act of 1977.)
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23
24
25

